

United States Senate
WASHINGTON, DC 20510

April 7, 2016

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Lew:

I write today regarding the treatment of Social Security Disability Insurance (SSDI) lump sum payments for the purposes of calculating a taxpayer's modified adjusted gross income (MAGI) and eligibility for advanced premium tax credits (APTC) under the Affordable Care Act (ACA). Based upon considerable concern voiced by my constituents, I urge Treasury and the Internal Revenue Service (IRS) to modify existing regulatory guidance to explicitly account for the unintended consequences on taxpayer APTC eligibility due to the current accounting rules that guide the treatment of lump sum retroactive SSDI payments.

Over the past few months, my office has been contacted by many constituents who have recently been awarded retroactive SSDI benefits and are now experiencing significant financial hardship due to the current method used to calculate their APTC eligibility. As you are likely aware, the process for determining SSDI eligibility is often a long and arduous task, with some individuals waiting years and going through several rounds of appeals before receiving benefits. Upon being determined eligible for SSDI benefits, individuals receive a one-time, lump sum disability benefit payment that dates back to the onset of their disability. In the Social Security Benefit Statement these individuals receive (Form SSA-1099), the Social Security Administration (SSA) then provides a record of what portion of their lump sum payment corresponds to which calendar year.

For the purposes of calculating an individual's income tax liability, the IRS gives taxpayers the option to use a previous year's income to calculate the taxable portion of an SSDI lump sum payment that the taxpayer should have received during that previous year, if such calculation would result in a lower taxable benefit. Taxpayers who receive SSDI lump sum payments may use the worksheet in IRS Publication 915 to take advantage of this alternative calculation method to determine whether or not they can lower their taxable income through this method. However, to determine APTC eligibility, the IRS attributes the full amount of the lump sum SSDI benefit to the single year in which it is disbursed. For many individuals with disabilities, this requirement pushes their income above 400 percent of the federal poverty line (FPL), the eligibility threshold for financial assistance on the Health Insurance Marketplace. Thus, these individuals must then repay the full amount of APTC assistance they have received throughout the year, as there is not a repayment cap above the 400 percent FPL threshold.

This is unfortunate, as significant portions of these SSDI lump sum payments often clearly correspond to previous years. Many of these lump sum recipients would remain within the eligibility threshold for financial assistance on the Marketplace if APTC eligibility was determined by allowing an individual to distribute their SSDI lump sum payment over the corresponding years to which the benefits actually apply. Instead, current policy unfairly penalizes SSDI beneficiaries for SSA's often multiyear

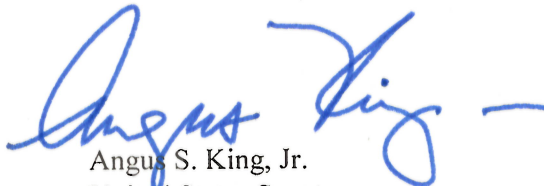
processing period of their applications. I am not alone in recognizing the financial hardship this policy presents to scores of Americans – indeed, this issue is highlighted by National Taxpayer Advocate (NTA) Nina Olson in the NTA's recent *Annual Report to Congress* as one of the twenty-four most serious problems that taxpayers encountered in 2015.¹

As you are likely aware, an SSDI eligibility determination rests largely on an individual's impairment rendering them unable to work beyond a very low earnings level. Thus, during the time individuals wait for a disability determination from SSA, many individuals with long-term disabilities or chronic health conditions spend down their savings or accrue substantial debt just to meet basic expenses. It makes little sense to then require these individuals to repay the APTC assistance they received under the current calculation process, as few of these individuals have the resources to do so. Certain other lump sum payments that an individual may receive in a year are elective, such as an IRA or 401(k) withdrawal, but these individuals in question have little control over how quickly SSA will determine their eligibility, and they should not be subject to an accounting policy that is inconsistent with the options the IRS provides for the very same payments in determining income tax liability.

While it is clear to me that the ACA affirms that SSDI benefits should count toward calculating an individual's MAGI, I firmly believe it is within the purview of Treasury and the IRS to issue clarifying guidelines around how multiyear SSDI lump sum payments should be treated in determining APTC eligibility. Thus, I ask that Treasury and the IRS work together to update current regulations pertaining to the MAGI calculation as soon as possible to ensure that individuals have the option to attribute SSDI lump sum payments to their corresponding tax years. Form SSA-1099 already provides this information both to SSDI beneficiaries and to the IRS, and given the parallel policy provided in IRS Publication 915 for income tax liability, I do not believe this would present a substantial burden on the agency.

I look forward to your prompt consideration of this request and would be happy to discuss this issue in greater detail. Please have your staff reach out to Aisha Woodward (202-224-5344) or Scott Wilkinson (207-622-8292) in my office with any questions.

Sincerely,



Angus S. King, Jr.
United States Senator

cc: The Honorable Sylvia Burwell, Secretary, Department of Health and Human Services
The Honorable John Koskinen, Commissioner, Internal Revenue Service

¹ National Taxpayer Advocate, *Annual Report to Congress 2015*, Vol. 1, p. 176.